

# **Bear Lake Comprehensive Management Plan**

## **Introduction Document on Sovereign Land Management**

### **Introduction**

Bear Lake covers more than 112 square miles and straddles the Idaho-Utah border. Approximate 20 miles long and 8 miles wide, it sits at an elevation of about 5920 feet on the northeast side of the Wasatch Range and on the east side of the Bear River Mountains. The bed of Bear Lake became state (sovereign) land on the date of Utah's statehood, January 4, 1896. The Division of Forestry, Fire and State Lands manages the sovereign land in accordance with the Public Trust Doctrine, state law and administrative rule. The purpose of this document is to summarize the management framework for the bed of Bear Lake.

### **The Origin of Sovereign Lands**

Under English common law, the Crown held title to all lands underlying navigable waterways, subject to the Public Trust Doctrine. Following the American Revolution, title to such lands in the U.S. vested in the 13 original colonies. Under the Equal Footing Doctrine, fee title to those lands also vested in each state subsequently admitted to the Union, upon admission. Utah's public trust lands, known as "sovereign lands," lie below the ordinary high water mark of navigable bodies of water. Utah's sovereign land includes Utah Lake, Great Salt Lake, Bear Lake (Utah's half), Jordan River, Bear River and portions of the Green, Colorado and Bear rivers.

### **Constitution, Statute and Rule**

The framework for sovereign land management is found in the Utah Constitution (Article XX), state statute (primarily Chapter 65A-10), and administrative rule (R652). Article XX of the Utah Constitution accepts sovereign lands to be held in trust for the people and managed for the purposes for which the lands were acquired. Section 65A-2-1 of the Utah Code provides: "The division [of Forestry, Fire and State Lands, FFSL] shall administer state lands under comprehensive land management programs using multiple-use, sustained-yield principles." Briefly stated, the overarching management objectives of FFSL are to protect and sustain the trust resources of, and to provide for reasonable beneficial uses of those resources, consistent with their long-term protection and conservation. This means that FFSL will manage Utah Lake's sovereign land resources under multiple-use sustained yield principles, implementing legislative policies and accommodating public and private uses to the extent that those policies and uses do not compromise public trust obligations (Section 65A-10-1) and sustainability is maintained. Any beneficial use of public trust resources is subsidiary to long-term conservation of resources. Administrative rules address planning (R652-90) and land use authorizations including minerals (R652-20), special use lease agreements (R652-30), easements (R652-40), rights of entry (R652-41), grazing (R652-50), cultural resources (R652-60), exchanges (R652-80) and off-highway vehicles (R652-1 10).

Although sovereign land planning and management responsibilities lie with FFSL, other divisions of the Department of Natural Resources (DNR) also have management responsibilities for resources on and around Utah Lake. The Division of Wildlife Resources, for example, has plenary authority for managing wildlife in, on and around the lake. The Division of Parks and Recreation manages Bear Lake State Park and coordinates search and rescue and boating enforcement on the lake. The Division of

Water Rights regulates the diversion and use of lake and tributary waters. The Division of Water Resources conducts studies, investigations and plans for water use. DNR divisions also regulate mineral extraction activities, conduct hydrologic research and identify and map geologic hazards around the lake.

## **The Public Trust over Sovereign Lands**

Under A.D. 6th Century Roman law, and perhaps earlier, the air, sea and running waters were common to all citizens and the separate property of none. All rivers and ports were public and the right of fishing was common to all. Any person was at liberty to use the seashore to the highest tide, to build a retreat on it, or to dry nets on it, so long as they did not interfere with the use of the sea or beach by others. Although the banks of a river could be privately owned, all persons had the right to bring vessels to the banks, to fasten them by ropes and to place any of their cargo there. The influence of Roman civil law carries forward through English common law to today's Public Trust Doctrine, which recognizes the special public interest in rivers, lakes, tidelands and waters.

The Public Trust Doctrine "is founded upon the necessity of preserving to the public the use of navigable waters free from private interruption and encroachment" (Illinois Central R.R. Co. V. Illinois, 1892). Sovereign lands are held in trust by the state for the benefit of the public. The "trust" is a real trust in the legal sense of the word. There is a clear and definite trust corpus (the lands, waters and living resources therein), clear beneficiaries (the public), elected and appointed state officials with fiduciary responsibilities in managing the trust corpus and a clear purpose for the trust. The Public Trust Doctrine establishes the right of the public to use and enjoy these trust waters, lands and resources for a wide variety of recognized public uses. The original purpose of the doctrine was to assure public access to navigable waters for commerce, navigation and fishing. Protection of these resources remains paramount. The Public Trust Doctrine has evolved, in some states, to include modern uses such as recreation, environmental protection and preservation of scenic beauty. Implementation of multiple-use and other legislative policies for sovereign land is subject to consistency with public trust obligations. The Public Trust Doctrine has been, and will continue to be, flexible to accommodate changing demands for public trust resources.

There is no hierarchy of uses protected under the doctrine, but when there are competing public benefits, the public trust requires that those benefits that best preserve the purpose of the public trust under the circumstances should be given a higher priority. The Utah Legislature has assigned responsibility for management of sovereign lands, including Utah Lake, to FFSL. As trustee, FFSL must strive for an appropriate balance among compatible and competing uses while ensuring that uses protected under the Public Trust Doctrine, commerce, navigation and fishing, have primacy. It is desirable to maintain the option to adjust the allocation of public trust resources in response to changes in demand and changes in administrative and legislative policy. There are circumstances under which a lessee or grantee must be able to restrict public access to fully enjoy the rights granted under a lease, permit or sale. Examples include restrictions during mining operations, construction of improvements, harbor operations, military operations and access to personal property. The test of any disposition of an interest in sovereign land is that it must be done without affecting the public interest in what remains. This involves a judgment call on the degree of affect on the trust resources.

Sale of sovereign lands is generally precluded by the constitutionally-imposed duty of the state to manage sovereign lands for the public. The general exception to this prohibition is if the disposition itself is in the furtherance of the public interest. Prior to 1988, state law limited the sale of sovereign lands to purposes that "promote a material public or quasi-public use or service, and then only in such quantity as may be reasonably necessary to promote such public or quasi public use or service; and provided further, that such use shall not unreasonably interfere with navigation" (Section 65-1-14). In 1988, state law was changed to allow the sale of sovereign land "only in the quantities and for purposes as serve the public trust and do not interfere with the public trust" [Subsection 65A- 10-1(1)]. This change reinforced application of the Public Trust Doctrine and further restricted the purposes for which sovereign land may be sold. The legislature has chosen to protect the public interest when sovereign land is sold or leased by requiring that "...the lease, contract of sale, or deed shall contain a provision that: (a) the lands shall be open to the public for the purpose of hunting, trapping, or fishing during the lawful season, except as provided by Section 65A-2-5; and (b) no charge may be made by the lessee, contractee, or grantee to any person who desires to go upon the land for the purpose of hunting, trapping, or fishing" (Section 23-21-4). Section 65A-2-5 reads: "The director of the Division of Forestry, Fire, and State Lands, in conjunction with the Wildlife Board, may restrict or limit public use of leased parcels of sovereign lands for hunting, trapping, or fishing: A. upon the petition of the affected lessee; B. after a public hearing; and C. upon a determination that unrestricted public use for hunting, trapping, or fishing substantially interferes with the primary activities authorized by the lease."

## **The Bear Lake Boundary**

The Bear River Compact (Appendix D) was drafted and signed in 1957 by the states of Utah and Idaho which provided for the present and future allocation and use of the water resources in the Bear River Basin including Bear Lake as well as how the water is allocated in times of water emergency. This document along with the operating agreements and subsequent amended Bear River Compact in 1978 stipulates how Pacificorp, who owns water rights to divert and store water in the Bear River Basin (including Bear Lake) , will divert, store and release water from Bear Lake between the elevations of 5902.00 feet and 5923.65 feet above mean sea level. By agreement the primary purpose of the storage waters of Bear Lake is to provide irrigation water and flood control to downstream users of the water. Providing hydroelectric power by the six downstream Pacificorp plants is secondary to the irrigation and flood control use. Incidental to Bear Lake's primary uses are the intense recreational use of Bear Lake in the form of boating, fishing, swimming and other dispersed recreational activities.

The elevational limit of 5923.65 feet above mean sea level has been the artificially set "high water mark" for the purposes of managing the lake resources and also establishing the boundary between sovereign lands and upland landowners. The Division of Forestry, Fire and State Lands is embarking to complete boundary settlements for the upland landowners. Because the high water mark has been agreed to and managed at 5923.65 feet for decades, and a court approved settlement boundary has been established at that elevation, it is anticipated that few disputes will occur on boundary settlements with the four hundred plus landowners, and should be completed by 2008.

## **The Planning Unit**

Lands subject to the Bear Lake Comprehensive Management Plan (CMP) are limited to sovereign lands. For the purposes of the planning process, the planning unit will include sovereign lands up to the elevation of 5923.65 feet above mean sea level. All land and resources within and underneath this elevation constitutes the planning unit. This elevation is designated by the Bear River Compact and subsequent documents which deal with the purposes and management of water in the Bear River Basin including the diversion, storage and release of water from Bear Lake.

On December 28, 2005, sovereign lands were withdrawn from leasing and permitting for 18 months or the date of completion of the Comprehensive Management Plan, whichever occurs first. The withdrawal does not apply to uses associated with boundary settlements, improvement of access and trails, or activities associated with the protection of endangered species. The intent of the withdrawal is to ensure that development and use of the lake occur within the context of the plan instead of driven by nominations and applications.

## **Sovereign Land Classifications**

Division rule (Section R652-70-200) allows for classification of sovereign land based upon current and planned uses:

- Class 1 - Manage to protect existing resource development uses.
- Class 2 - Manage to protect potential resource development options.
- Class 3 - Manage as open for consideration of any use.
- Class 4 - Manage for resource inventory and analysis (a temporary classification).
- Class 5 - Manage to protect potential resource preservation options.
- Class 6 - Manage to protect existing resource preservation uses.

To date, none of these classifications have been applied to Bear Lake.

## **Existing Leases and Permits**

Existing leases and permits include forty-eight easements, two rights of entry, five general permits, and five special use lease agreements. See Appendix A for detailed on existing leases and permittees.

## **Public Access to Bear Lake**

There are a number of access points to the lake both public and private. The public access points include campgrounds, marinas and numerous “walk-in” and day use areas along U.S. Route 89 and the east shore road. See Appendix B for named public access points.

## Appendix A – Existing Leases and Permits

### Easements and Rights of Way

Lease #	Lessee/Permittee	Type	Purpose
40000028	Alta S. Nye Family Trust	Recreational	floating dock
40000021	Andreason, Norman	Recreational	sea wall/boat ramp
40000079	Ballif, Neil	Recreational	floating/portable dock
40000032	Bear Lake Limited	Recreational	floating dock
40000045	Bowcutt, Vaughn	Recreational	floating/portable dock
ROW 3095	Boy Scouts of America	Recreational	campground
40000026	Bridgerland Village	Recreational	floating dock
40000052	Brower, Dale	Recreational	floating/portable dock
40000056	Call'S Investment Co	Recreational	sea wall/boat ramp
40000068	Carver, William	Recreational	floating/portable dock
40000043	Casa Blanca Limited	Recreational	floating dock
40000070	Cisco Road Enterprises, Llc	Recreational	sea wall/boat ramp
40000042	Crandall, John & Leslie	Recreational	floating/portable dock
40000039	Diederich, Wilford	Recreational	floating dock
40000040	Downs Bear Lake, Lc.	Recreational	sea wall/boat ramp
ESMT 82	Falula Farm, Inc	Right of Way	pipeline
40000058	Frandsen, Kent	Recreational	floating/portable dock
40000030	Free, David & Deanna	Recreational	floating dock
40000060	Green, Helen	Recreational	sea wall/boat ramp
40000005	Gunnell, Lance	Wildlife Habitat	Shoreline Riprap
40000057	Hales, Max	Recreational	floating/portable dock
40000075	Hanzelka, Cyril	Recreational	floating/portable dock
40000037	Haycock, Bernice & Gary	Recreational	sea wall/boat ramp
40000061	Horsley, Jack	Recreational	sea wall/boat ramp
40000053	Jager, Steven	Recreational	floating/portable dock
40000077	Kemker, Ralph & Corlene	Recreational	floating/portable dock
40000055	Killpack, Robert	Recreational	floating/portable dock
40000087	Krug, Paul	Recreational	floating/portable dock
40000023	L. Ray Hansen Family Trust	Recreational	floating dock
40000072	Lancy, David	Recreational	sea wall/boat ramp
40000046	Larsen, Karen	Recreational	sea wall/boat ramp

<b>Lease #</b>	<b>Lessee/Permittee</b>	<b>Type</b>	<b>Purpose</b>
ESMT 70	Nebeker, Sidney	Right of Way	Pipeline
40000031	Parrish, Richard	Recreational	floating dock
40000054	Patterson Et Al, Robert	Recreational	floating/portable dock
40000022	Peterson, John & Eleanor	Recreational	sea wall/boat ramp
40000038	Phelps, Jerry	Recreational	sea wall/boat ramp
40000047	Quinn, Mildred	Recreational	sea wall/boat ramp
40000071	Robinson Properties	Recreational	floating/portable dock
40000027	Sealy, M. Devro	Recreational	sea wall/boat ramp
40000025	Slater, Thomas	Recreational	sea wall/boat ramp
40000036	Smart, Jay	Recreational	sea wall/boat ramp
40000033	Spinnaker Pt Homeowners Assoc	Recreational	floating dock
40000044	Stirk, Mary	Recreational	sea wall/boat ramp
40000050	Susaeta, John	Recreational	sea wall/boat ramp
40000035	Taylor, Gene	Recreational	sea wall/boat ramp
40000048	Watts, Michael	Recreational	floating/portable dock
40000078	Wheelright, Hal, & Hans Borschel	Recreational	floating/portable dock
40000017	Williams, Don	Wildlife Habitat	bank stabilization
40000069	Williams, Lucille	Recreational	sea wall/boat ramp

## Rights of Entry

Lease #	Lessee/Permittee	Type	Purpose
40000005	BLH Enterprises, LLC	Recreational	right of entry
40000017	BLH Enterprises, LLC	Recreational	right of entry

## General Permits

Lease #	Lessee/Permittee	Type	Purpose
73000011	Hansen, Dell		
SLGP 0005	Hodges Beach Home Owners	Recreational	boat ramp
73000008	Jager, Steven	Recreational	boat ramp
SLGP 0021	Utah Parks & Recreation	Recreational	boat ramp
SLGP 0018	Utah Wildlife Resources	Agriculture	fishery habitat

## Special Use Lease Agreements

Lease #	Lessee/Permittee	Type	Purpose
SULA 333	Azure Cove, Inc	Commercial	marina
SULA 312	Beck's Bear Lake Property	Commercial	boat ramp
SULA 531	Hodges, Mark	Recreational	boat ramp
SULA 648	Ideal Beach Master Assoc	Commercial	marina
SULA 647	Ideal Beach Master Assoc	Commercial	marina

## **Appendix B - Bear Lake Access Points**

### **Campgrounds**

Rainbow Cove  
Cisco Beach  
South Eden  
First Point  
Rendezvous Beach State Park  
KOA  
Bear Lake State Marina

### **Marinas**

Idaho North Beach (Idaho)  
Idaho Eastshore State Park (Idaho)  
Rainbow Cove  
First Point  
Rendezvous Beach  
Spinnaker Marina  
Bear Lake State Marina

### **Fishing Access**

Numerous access along US 89 and East shore road